

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

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In re:

Kenneth Wayne Swiney

Respondent

P & S Docket No. D-98-0005

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Decision Without Hearing
By Reason of Consent

This proceeding was instituted under the Packers and Stockyards Act, 7 U.S.C. § 181 et seq., hereinafter "the Act," by a complaint filed by the Deputy Administrator, Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture, alleging that the respondent wilfully violated the Act. This decision is entered pursuant to the consent decision provisions of the Rules of Practice applicable to this proceeding (7 C.F.R. § 1.138).

Respondent, Kenneth Wayne Swiney, admits the jurisdictional allegations in paragraph I of the complaint and specifically admits that the Secretary has jurisdiction in this matter. Respondent neither admits nor denies the remaining allegations, waives oral hearing and further procedure, and consents and agrees, for the purpose of settling this proceeding and for that purpose only, to the entry of this decision.

Findings of Fact

1. Respondent Kenneth Wayne Swiney is registered as a partnership with his father, K.D. Swiney. At all material times, K.D. Swiney was retired and Respondent was sole operator of the partnership's business operations subject to the Act.

2. Respondent's mailing address is Route 2, Box 103, Bunker, Missouri 63629.

3. Respondent at all material times herein was:

(a) Engaged in the business of buying and selling livestock in commerce for his own account; and

(b) Registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce.

Conclusions

Respondent having admitted the jurisdictional facts and the parties having agreed to the entry of this order, this order will be entered.

Order

Respondent Kenneth Wayne Swiney, his agents, employees, successors, and assigns, directly or indirectly through any corporate or other device, in connection with his activities subject to the Packers and Stockyards Act, shall cease and desist from:

(1) Issuing checks in payment for livestock purchases without maintaining sufficient funds on deposit and available in the account upon which the checks are drawn to pay the checks when presented;

(2) Failing to pay, when due, the full purchase price of livestock; and

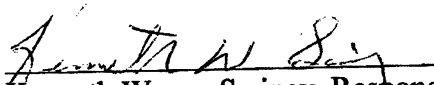
(3) Failing to pay the full purchase price of livestock.


Respondent Swiney is suspended as a registrant under the Act for a period of five (5) years; provided, however, that upon application to the Grain Inspection, Packers and Stockyards Administration, a supplemental order may be issued terminating this suspension at any time after the expiration of 360 days upon demonstration by Respondent that all unpaid livestock sellers have been paid in full. It is provided further that this order may be modified upon application to

the Grain Inspection, Packers and Stockyards Administration to permit Respondent Swiney's employment by a registrant or packer after the expiration of the 360-day period of suspension upon demonstration of circumstances warranting modification of the order.


The provisions of this order shall become effective on the sixth (6th) day after service of this decision on Respondent.

Copies of this decision shall be served on the parties.


Kenneth Wayne Swiney, Respondent


Deborah Ben-David
Attorney for Complainant

Issued this 19th day of April, 1999.


Administrative Law Judge